

May 28, 1996

## Advisory Opinion 1996 - No. 8

### QUESTION

Would an international trip by a legislator, paid by non-legislative funds, violate the State Ethics Act under the following circumstances (summarized from the opinion request):

Several legislators are invited to participate in "an important trade mission to Spain." The sponsor/coordinators for the trip are the Commercial Attache of the U.S. Embassy in Spain; the Spanish Vice Consul General in Washington State; the Spanish National Parliament; the Andalusian and Valencia (regional) Parliaments; Renfe, the government-owned rail transportation department; Talgo, Spain's private train manufacturer; Iberia, the government-owned airline and tourism department; and the Boeing Company.

The purposes for the trip include the observation of the Spanish transit system, especially the commuter rail components; the promotion of Washington State agricultural and technology products; the creation of opportunities for visits with Spanish national and regional government officials; and the development of a research physician exchange program. The opinion request also notes that "Washington State has committed to purchase of high-speed trains from Talgo, the Spanish train manufacturer."

None of the Spanish hosts for this trip are seeking to influence specific legislation in Washington State. The Boeing Company's participation results from their interest in marketing to Iberia, not legislation in Washington, and is limited to hosting one dinner with their Spanish representative in Madrid.

### OPINION

Based upon the facts as stated in the opinion request, and given the assumptions and conditions stated in the Board's opinion below, this trip would not be a violation of the State Ethics Act.

There are several statutes and prior opinions of the Board which are relevant to this question.

*RCW 42.52.010(9)(d)* exempts from the definition of gift "payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity."

*RCW 42.52.150(4)* does not permit the trade mission exemption for "a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters" with respect to "a person regulated by

the agency or from a person who seeks to provide goods or services to the agency."

*RCW 42.52.140* prohibits receipt of any thing of economic value, regardless of whether it is classified as a gift, "if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction."

**Advisory Opinions 1995 - No. 10, and 1996 - No. 1** deal with trips by legislators. These opinions set forth conditions and cautions to be reviewed in determining whether a trip is permissible under the State Ethics Act.

The opinion request specifically states that this trip is "an important trade mission to Spain." It then provides details regarding the subjects and participants to support that characterization. For the purpose of this opinion, the Board takes as fact the statement that the trip falls within the statutory term "trade mission." Whether or not a particular trip fits that term will depend on the facts in each situation.

In **Advisory Opinion - No. 10**, the Board cautioned that special scrutiny would be given to trips which involve significant expense and a lobbying purpose. By definition, trade missions involve significant expense. Trade missions also involve a generalized good will, or non-specific lobbying purpose, since the intention is to promote opportunities for trade between countries, and to enhance those opportunities with legislative changes when needed or appropriate. The Board recognizes these aspects of trade missions, and assumes that the statute contemplated these activities. However, members are strongly cautioned that any specific lobbying purpose related to particular legislation could be in violation of *RCW 42.52.140*.

**Advisory Opinion - No. 10** also included cautionary language advising that members not accept payment for items, services, or other benefits that are "not reasonably necessary to carry out the . . . purpose of the (trip)." The Board specifically noted that members would be subject to the statutory gift restrictions on payments for recreational activities, such as golf and tennis. The Board repeats the same caution here, but with the recognition that more latitude is given in the context of a trade mission. The purpose of a trade mission is to foster good will and relations between countries. Recreational outings are often provided as a part of the mission. These group events would be permissible. Occasions or events which are unrelated to the trade mission activities and do not fulfill the purposes of the mission would be subject to the statutory gift limits.

Similarly, gifts are often exchanged as a part of a trade mission. In most instances, the donor of these gifts will be insulted if the traveler rejects the gift and this would be contrary to the purpose of the trade mission. *RCW 42.52.150(2)(h)* specifically recognizes the propriety of this situation when the donor is a foreign dignitary. For these reasons, we conclude that certain gifts and social and recreational activities, that are typically provided in the course of trade missions, are reasonably necessary to carry out the purposes of the trade mission and are, therefore, excluded from the statutory definition of gift.

RCW 42.52.150(4) restricts state officials and employees from accepting items from persons who are regulated by or who provide goods and services to the agency of the official or employee. The opinion request notes that "Washington State has committed to purchase of high-speed trains from Talgo, the Spanish train manufacturer." The Board will presume for this opinion that none of the legislators included in the trade mission had, or will in the future have, any direct participation in the "contractual matters" related to purchase of the trains. The prohibition applies to officers and employees of a purchasing agency who directly participate in the contracting function. Preparation of, and voting on, authorizing legislation does not place a legislator in such a position.

In **Advisory Opinion 1996 - No. 1** the Board held that payment of enrollment and course fees and travel expenses for an educational seminar could not be accepted from a registered lobbyist unless the lobbyist is the sponsor of the educational program.

The board has not previously considered whether, or how, the limits established by its interpretation might apply to trade missions. The same concerns the Board expressed in **Advisory Opinion 1996 - No. 1** apply to trade missions. Solicitation and/or acceptance of travel expense funds or reimbursements from third-party registered lobbyists to attend a trade mission raises a significant question of possible influence under RCW 42.52.140.

In this case one of the participants is a registered lobbyist, the Boeing Company. However, the company is limiting its participation to hosting a single dinner, which will be held in Spain with Boeing representatives. Under these circumstances the lobbyist participation is permissible.

[Editorial note: Opinion requests 8 and 9 were originally submitted as one, but have been separated by the Board for clearer analysis.]